

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF AMERICAN OPERATOR)	
SERVICES, INC., FOR A CERTIFICATE OF)	
CONVENIENCE AND NECESSITY TO PROVIDE)	CASE NO. 10130
INTRASTATE OPERATOR ASSISTANCE RESOLD)	
TELECOMMUNICATION SERVICES AS A)	
NON-DOMINANT CARRIER)	

O R D E R

On January 13, 1988, American Operator Services, Inc. ("AOSI")¹ filed its application for a certificate of public convenience and necessity to provide intrastate operator services. Subsequently, AmeriCall Systems of Louisville, Inc. ("AmeriCall"), South Central Bell Telephone Company ("South Central Bell"), VeriCall Services, Inc., and International Telecharge, Inc. ("ITI"), requested and received full intervention status in this proceeding.

On March 22, 1988, AOSI filed motions for an interim certificate of convenience and necessity or, in the alternative, relief from the possibility of civil fines or penalties resulting from its provision of unauthorized intrastate services, and an Order directing South Central Bell to resume billing and collection services for AOSI. In support of its motion for an

¹ Previous Orders and other documents in this case have referred to AOSI as "AOS"; however, as this has become a common acronym for "Alternative Operator Services", its use has been avoided in this Order.

interim certificate, AOSI indicated that in the May 24, 1984 Order in Administrative Case No. 273,² the Commission held that in the case of applications by non-dominant carriers for initial certification, the public convenience and necessity would be assumed and the burden of disproving that convenience and necessity would rest with the opposing party. AOSI contended that it is a non-dominant carrier and that an interim certificate should be issued as promptly as possible, especially since not a single intervenor had opposed AOSI's application.

On May 17, 1988, the Commission denied AOSI's motions and rejected the notion that non-dominant carrier principles are automatically applicable to AOSI. The Commission indicated that it would take all necessary steps to discourage long-distance utilities from offering services without authorization and that the lack of a formal Order to cease and desist should not lead to the inference that the continued intrastate operation of AOSI was condoned. Accordingly, the Commission declined to order South Central Bell to provide billing and collections services for unauthorized services.

An informal conference was held on October 4, 1988 in which all issues of the pending application were discussed. On October 20, 1988, AOSI filed comments on the October 12, 1988 informal conference memorandum. On November 14, 1988, the Commission issued an Order stating that AOSI's application may be considered

² Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

without a formal public hearing and established a procedural schedule to develop a complete record by giving an opportunity to file comments or summaries of positions. AmeriCall and South Central Bell separately filed such comments on December 2, 1988. AOSI filed reply comments on December 12, 1988.

In its reply comments, AOSI requested that the refund issue either be resolved in such a way that no refunds be required or that the full Commission should hear and determine this issue. Accordingly, on January 31, 1989, the Commission issued an Order requiring AOSI to appear at a hearing and to be prepared to show cause why it should not be required to refund charges collected for all intrastate services rendered in Kentucky prior to its certification or be otherwise fined pursuant to KRS 278.990 for violating provisions of KRS Chapter 278, including KRS 278.160. In the alternative, AOSI was requested to file a plan that refunds the entire amount collected by AOSI for intrastate services provided prior to certification. AOSI responded on February 10, 1989, electing to forego the hearing and instead indicating its intent to file a refund plan, which was subsequently filed on February 24, 1989. On March 22, 1989, the Commission ordered AOSI to implement its refund proposal.

Also on March 22, 1989, the Commission issued an Interim Order allowing AOSI to provide interLATA operator-assisted service from Bell Operating Company pay telephones. This Order listed only the minimum conditions of service necessary to protect the public interest when using this type of telephone. It was

indicated that the Commission's Opinion and Order relating to the remaining authority requested in AOSI's application, and including additional conditions of service, would shortly follow.

In its application, AOSI described its proposed service offerings as providing intrastate, operator-assisted resold telecommunications services to the public from facilities controlled by institutional customers. AOSI indicated that a complete description of the proposed services was contained in its tariff, filed as Exhibit B with its application. Since the time of filing the original application, AOSI has revised its tariff several times. Its latest tariff describes three classes of services: Switched Access A Classification, which is primarily furnished to users of privately-owned coin operated telephone stations; Switched Access B Classification, which is primarily furnished to guests of hotels/motels and patients at hospitals; and Switched Access C Classification, which is primarily furnished to airline passengers, meeting hall attendees and others using subscriber-owned telephone stations at high traffic locations, such as airports and convention centers. All three classes of service require the users of the services to have an authorized telephone calling card or an acceptable credit card, or must have the responsibility for payment of charges accepted by the called party or a third party.

Concurrent with AOSI's application, the Commission received several applications from carriers seeking to provide similar

services.³ The applications of Elcotel LD*OS, Inc., and VeriCall Services, Inc., were withdrawn and subsequently dismissed. The Commission denied the applications of International Telecharge, Inc., ("ITI") and Central Corporation; however, on August 3, 1989, the Commission issued an Order on rehearing in Case No. 10002, which granted ITI the authority to provide interLATA operator-assisted telecommunication services within Kentucky. This authority to provide service was subject to various restrictions and conditions of service described in that Order. Also in that Order, the Commission indicated its intent to universally apply these restrictions and conditions of service to all providers of operator services. The Commission is of the opinion that AOSI should similarly be required to comply with the same restrictions and conditions of service.

However, independent of the investigations into other operator services, several issues with respect to AOSI's services have been thoroughly examined in this proceeding. As previously mentioned, the Commission has already rejected the notion that non-dominant carrier principles were automatically applicable to AOSI. AOSI responded to this Order by letter dated May 29, 1988,

³ Case No. 10002, The Application of International Telecharge, Inc., for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services within the State of Kentucky; Case No. 10035, The Application of Central Corporation for a Certificate to Resell Telecommunications Service; Case No. 10177, The Application of Elcotel LD*OS, Inc., for an Authorization to Furnish Intrastate Telecommunications Service Involving Operator Assistance Type Calls, for the Private Pay Phones and Hotel/Motel Type Telephone Markets; and Case No. 10162, Application of VeriCall Services, Inc.

filed June 2, 1988. AOSI contended that there were certain factual inaccuracies contained in that Order, although it was noted that initially its letter should not be interpreted as a request that the Commission reconsider the Order. AOSI contended that the Commission erred in its determination, at footnote 3 of the Order, that alternative operator services have clearly demonstrated their ability to function as micro-monopolies and have demonstrated their ability to charge monopoly prices. AOSI felt that there was no basis in the record of this case for such a conclusion, nor did it believe that the records in Case Nos. 10002 and 10035 warranted such a conclusion. AOSI felt it was not a monopolist and that this point was not academic because under the principles established in Administrative Case No. 273, it should be treated as a non-dominant carrier. AOSI noted that "any concerns which the Commission may have as to the unfettered ability of [AOSI] to raise prices to unreasonable levels should be allayed by the Commission's unquestioned ability to assert its jurisdiction, sua sponte, should [AOSI] begin to charge unreasonable rates." AOSI also indicated that it failed "to understand the Commission's inability to identify the benefits that the alternate operator service industry confers, both to the end user and the owner of the customer premise (sic) equipment." AOSI further stated that:

Instead, the Commission's attitude seems to be that it will, ultimately, allow this industry to do business in the state by providing intrastate services; but it will place a cap on its rates equal to those of the dominant carrier. Such regulation will do nothing to promote operator services in Kentucky. Instead, such a myopic view toward this industry will hamper the growth of the

alternate operator service industry and will delay the delivery in Kentucky of the kind and diversity of operator services which only vigorous competition can create.

Whether or not AOSI has an ability to function as a micro-monopoly is an academic point, inasmuch as the definition of "monopoly" is not the sole criteria used in determining if non-dominant carrier principles should apply to a particular carrier. In the May 17, 1988 Order in this proceeding, the Commission stated its opinion that:

Administrative Case No. 273 contemplated the provision of "1+" or similar service by various interexchange carriers, directly to end-user customers. The underlying rationale behind permitting competition in the interLATA market is that market pressures, e.g., the ability of telecommunications users to freely choose carriers, would operate to assure that non-dominant carriers charge reasonable rates. We found in Administrative Case No. 273 that non-dominant carriers would not be able to charge unreasonable rates, due to their lack of market power. (Footnote omitted) The separation, by [AOSI], of the customer base from the universe of users, may preclude the application of non-dominant carrier analysis to [AOSI].

Although AOSI lacks market power, it is clear from the record in this proceeding that the manner in which AOSI's services are provided does affect the ability of telecommunications users to freely choose carriers. This distinction from the services contemplated in Administrative Case No. 273 is sufficient to conclude that non-dominant carrier principles should not be applied to the operator services provided by AOSI, particularly the rate flexibility normally allowed a non-dominant carrier.

AOSI has correctly anticipated the Commission's intent to cap AOSI's operator services rates equal to those of the dominant

carrier.⁴ The Commission's rationale is thoroughly discussed in the August 3, 1989 Order in Case No. 10002 and will not be repeated here. However, in reference to AOSI's opinion that such regulation "will hamper the growth of the alternate operator service industry and will delay the delivery in Kentucky of the kind and diversity of operator services which only vigorous competition can create", it should be noted that AOSI has failed to demonstrate that it provides any significant improvements, that are in public demand, over traditional operator services. Furthermore, it is AOSI's responsibility to identify and demonstrate these benefits, not the Commission's.

However, the Commission has made it a policy to allow competition in the interLATA operator-assisted services market. Therefore, the Commission will allow AOSI to operate, but only under the restrictions delineated in this Order. The Commission is of the opinion that because of the characteristics of AOSI's operations, primarily its lack of a formal, prearranged relationship with the actual users of its services, the conditions of service ordered herein are necessary in order for the service being offered to be in the public interest, and that without such restrictions, the Commission would not allow AOSI to operate. The Commission will monitor the effectiveness of these restrictions and may make further modifications to either increase or decrease these restrictions as the situation warrants.

⁴ In Kentucky, AT&T Communications of the South Central States, Inc. is the only interLATA dominant carrier. All of the local exchange carriers are considered dominant.

FINDING AND ORDERS

The Commission, having reviewed the evidence of record, and being sufficiently advised, is of the opinion and finds that AOSI should be authorized to provide interLATA operator-assisted services in Kentucky, but only under the restrictions delineated in this Order.

IT IS THEREFORE ORDERED that:

1. AOSI be and it hereby is granted the authority to provide interLATA operator-assisted telecommunication services subject to the restrictions and conditions of service contained herein. This authority to provide service is strictly limited to those services described in this Order and contained in AOSI's application.

2. AOSI's operator-assisted services shall be subject to rate regulation and that its rates should not exceed AT&T's maximum approved rates. "Maximum approved rates" is defined to mean the rates approved by this Commission in AT&T's most recent rate proceeding for measured toll service applicable to operator-assisted calls, as well as the additional charges for operator assistance. AOSI is not permitted to include any other surcharges, or to bill for uncompleted calls. Time-of-day discounts shall also be applicable. AOSI is also required to rate calls using the same basis that AT&T uses to rate calls, i.e., distance calculations based on points of call origination and termination; definitions of chargeable times; and billing unit increments, rounding of fractional units, and minimum usages. In

Case No. 9889⁵ the Commission allowed AT&T a limited amount of rate flexibility in that it was allowed to reduce certain rates up to a maximum of 10 percent without filing the full cost support normally required in a rate proceeding. AOSI is not required to match rate reductions that result from this rate flexibility. However, when there is any change in AT&T's maximum approved rates, AOSI shall comply with the requirements herein within 30 days of the effective date of AT&T's rate change.

3. AOSI shall not be permitted to add any surcharges, other than approved operator handling charges, to the price of a call, and it is not permitted to bill for uncompleted calls.

4. Except as otherwise indicated in this Order, AOSI shall be subject to the non-dominant carrier regulations as delineated in the May 25, 1984 Order in Administrative Case No. 273, as well as any subsequent modifications to non-dominant carrier regulations. In the event of conflict, the terms of the instant Order shall take precedence, unless AOSI is specifically relieved from compliance with any conditions contained herein.

5. Access to the operator services of competing carriers shall not be blocked or intercepted; however, this requirement does not pertain in situations where the customers who have control of premises equipment are also the users and bill-payers of AOSI's services.

⁵ Case No. 9889, Adjustment of Rates of AT&T Communications of the South Central States, Inc.

6. Access to the local exchange carrier's operators shall not be blocked or otherwise intercepted. Specifically, this will require that all "0 minus" calls, that is, when an end-user dials zero without any following digits, be directed to the local exchange carrier operators. In equal access areas, "0 plus" intraLATA calls shall not be intercepted or blocked. In non-equal access areas, it is prohibited to block or intercept "0 minus" calls; however, it is permissible to intercept "0 plus" calls.

7. Blocking and interception prohibitions shall be included in AOSI's tariffs and contracts stating that violators will be subject to immediate termination of service if the customer premises equipment is not brought into compliance within 20 days notice to the owners of such equipment.

8. AOSI's operators shall provide, upon specific request, carrier identification codes that are used in 10XXX0 dialing sequences.

9. AOSI shall provide tent cards and stickers to be placed near or on telephone equipment used to access its services and shall include provisions in tariffs and contracts stating that violators will be subject to termination of service.

10. AOSI shall identify itself at both the beginning and conclusion of every call.

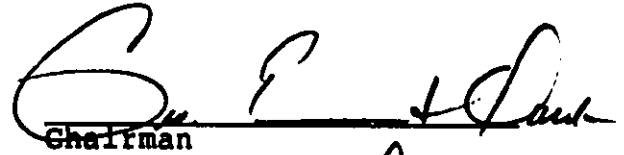
11. AOSI shall provide an indication of its rates upon request to any caller.

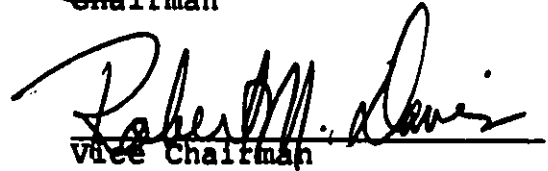
12. AOSI shall not accept calling cards for billing purposes if it is unable to validate the card.

13. AOSI shall file its revised tariff sheets to conform to the restrictions and conditions of service contained herein, within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 3rd day of August, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director